

# **BEFORE THE OFFICE OF THE COMMISSIONER OF RAILROADS**

## **STATE OF WISCONSIN**

In the matter of the:

Commissioner's Own Motion for an Investigation of the Closure of Haynes Street at the Wisconsin Central Ltd. Tracks in the Village of Milladore, Wood County

9164-RX-636

### **FINAL DECISION**

Pursuant to due notice, public hearing was held in this matter on May 23 and May 24, 2006 in the Village of Milladore, Wisconsin with hearing examiner Tom Running presiding.

On July 3, 2006, the hearing examiner issued a proposed decision. By letter dated August 2, 2006, the Village President filed comments commenting on the proposed decision. By letter dated August 3, 2006 the WCL filed comments on the proposed decision. Both comments regarded the cost of the end of road treatments.

A federal safety program provides funds to match voluntary crossing closure incentive payments paid by a railroad to a municipality. The Commissioner notes that at the hearing the WCL proposed that it would make a \$20,000 payment to the Village if the Village paid the cost to construct any necessary end-of-road treatment. This proposal runs contrary to the past practice in Wisconsin.

The Commissioner has typically ordered the railroad to pay the cost of constructing the end-of-road treatment. The railroad (including the WCL as well as other railroads) has made the incentive payment on top of the cost of the end-of-road treatment (vehicle turnaround). That practice gives communities a real financial incentive to agree to the closure of crossing. Both the WCL and the Village noted that the cost of the construction of the vehicle turnaround could easily approach or exceed \$20,000, i.e., the Village could very well spend the entire 'incentive' payment just to complete the closure of the crossing. Thus, the WCL proposal essentially provides no incentive at all.

The WCL proposal is simpler to implement and if the lump sum were substantially increased, then it might be good public policy. It is possible that the Commissioner would agree to apportion the costs of the end-of-road treatment to the municipality if the railroad entered into a binding agreement to pay a substantially larger incentive payment to the community. As it stands now, the Commissioner has no choice but to apportion the costs of the end-of-road treatment to the WCL.

Appearances:

**Parties**

In Support:

Wisconsin Central Ltd.  
by  
Tom Healey  
General Attorney  
17641 South Ashland Avenue  
Homewood, Illinois 60430

As Interest May Appear:

Village of Milladore  
by  
Douglas Sievwright, Village President  
211 Second Street PO Box 84  
Milladore WI 54454

Wisconsin Department of Transportation  
by  
Matthew Bronson, US 10 Project Leader  
1681 2<sup>nd</sup> Ave South  
Wisconsin Rapids, WI 54494

Of the Office Staff:

Tom Clauder, Railroad Investigator

In addition to the parties, three persons registered at the hearing. Of these registrants, three opposed closing, none supported closing it and none registered "as interest may appear". Two letters were filed with the Office, both in opposition to closure.

Findings of Fact

THE COMMISSIONER FINDS:

The Commissioner directed the staff of the Office of the Commissioner of Railroads to investigate the potential closure of the public crossing of the Wisconsin Central Ltd. (WCL) tracks with Haynes Street in the Village of Milladore. The **commissioner orders** that the Haynes Street crossing be closed.

The railroad currently operates 16 through train movements per day over the Haynes Road crossing location at a speed of 60 mph. The railroad operates no switch movements per day at this location. There is a siding immediately west of West Street that can occasionally be used for storage of rail cars.

Haynes Street is a north-south roadway that runs from Third Street to South Street. It dead-ends just north of Third Street, and T-intersects with South Street. It intersects the tracks immediately south of USH 10. It is 22 feet wide and intersects the WCL tracks at an angle of about 90°. The roadway approaches to the crossing are approximately level.

Subsequent to the hearing, in June of 2006 the Wisconsin Department of Transportation performed a special traffic count to arrive at an annual average daily traffic count of 139 vehicles per day. The speed limit is posted at 25 mph.

Due to the proximity of the intersection of Haynes Street and USH 10 to the crossing, vehicles can be assumed to be traveling at 10 mph as they approach the crossing. Assuming a train speed of 60 mph, a driver needs to see a train when it is 780 feet from the crossing. The sight distance available in each quadrant from the safe stopping distance is 1,000 feet in the northwest quadrant, 300 feet in the northeast quadrant, 475 feet in the southwest quadrant and 315 feet in the southeast quadrant. Sight distance is inadequate in three of the four quadrants.

A driver stopped at the stop signs at the crossing must be able to see 1,345 feet down the track to clear the crossing prior to the arrival of a train. This assumes a WB-50 semi-truck. The clearing sight distance available in each quadrant from the stop signs is 1,000 feet in the northwest quadrant, 300 feet in the northeast quadrant due to trees and vegetation, 1,000 feet in the southwest quadrant and 500 feet due to trees and vegetation in the southeast quadrant. Clearing sight distance is inadequate in all quadrants. This means that there is not sufficient distance to see whether a motorist can safely cross the crossing. Even passenger cars require 615 feet of clearing sight distance. This inadequate clearing sight distance is extremely hazardous.

There have been five accidents at Haynes Street since 1979. They occurred in 1979 with one injury, 1992 with one injury, 1996 with no injuries, 1997 with one injury, and 2001, with one injury.

Accidents that do occur here will likely be quite serious if a through train is involved due to their 60 mph speed. Train speed is strongly correlated with fatalities in train/vehicle accidents. More specifically, crossings with train speeds of 40 mph and over have a disproportionate number of fatalities. According to Federal Railroad Administration (FRA) statistics, nationally, in 1994 71% of fatalities occurred at crossings with train speeds of 40 mph+, even though only 26% of all crossings had train speeds of 40 mph+.

USH 10 which currently runs through the village will be relocated to a route roughly one-half mile to the north as part of a project by the Wisconsin Department of Transportation. This project is scheduled for 2011. Haynes Street will not have an intersection with the new USH 10.

There were several comments in opposition to closure. West Street currently has a poor crossing condition, with a grade approaching the crossing. The WCL plans on doing maintenance of the crossing to resolve the rough crossing condition. During a fire in the 1990's at the restaurant located at the end of Haynes Street, fire trucks used both Haynes and West

Street for a one-way flow of traffic to the fire. The warehouse, the auto repair shop, and the restaurant on Haynes Street all get deliveries by truck, and closure can affect the ease of access and egress to these businesses.

Adequate alternate routes to Haynes Street exist. A nearby crossing at West Street provides adequate access out of this area to USH 10. Blockages of the crossing by stopped trains are rare, and would usually only occur in the event of an emergency. In the event that the Haynes Street crossing is blocked, the West Street crossing, located one block west of Haynes Street, would also likely be blocked. The WCL has indicated that in the event of a blocked crossing due to an emergency, the community can contact its dispatch center to arrange for the train to be split to provide emergency access to the area south of the tracks. There are no residences or businesses between USH 10 and the tracks on Haynes Street. There are four residences, a warehouse and an auto repair shop between the tracks and South Street. There is a restaurant at the intersection of Haynes Street and South Street. Closing the crossing will add a maximum of four blocks of travel distance from the residences on Haynes Street to eastbound on USH 10. Closing Haynes Street at the tracks will have very little impact on public convenience.

Since traffic will still need to get from one side of the tracks to the other, closing the crossing will not reduce the total number of potential conflicts. Frequently, it is suggested that spreading the traffic over two crossings instead of one crossing would be safer. The contrary is actually true. The fewer the points of conflict the less likely a conflict is to occur. Closing the crossing will eliminate a point of conflict and that will increase safety due to the "queuing" effect. The queuing effect works to reduce accidents because it reduces the number of drivers that must make a decision to stop for an approaching train. In essence, after one driver stops, other drivers are much less likely to pass and go across the tracks. The queuing effect works because it favorably influences driver behavior at the precise moment of danger, when a train is approaching the crossing.

The frequency and speed of trains make this crossing dangerous for public use. The availability of a nearby crossing with convenient connecting roads allows the crossing to be closed without undue impact on the convenience of motorists. West Street is scheduled for the installation of flashing light signals and gates in 2006. Closing the crossing after the installation of the warning devices at West Street will improve public safety.

The Haynes Street crossing presently has crossbucks and stop signs for warning devices. These warning devices are inadequate. Because of the number and speed of trains and the accident history, if the crossing remained open, automatic flashing lights with gates would be needed to adequately protect public safety. Such an installation costs about \$130,000 per crossing. The cost of crossing signals is paid by the state and federal government. It would be unreasonable to expend these limited resources at Haynes Street. The road carries very little traffic and that traffic can be served by alternate routes. Haynes Street is a redundant crossing. Eliminating a redundant and hazardous crossing serves the public interest.

In summary, the closure of the crossing at-grade of the WCL tracks with Haynes Street will promote public safety and convenience by eliminating a point of potential conflict between trains and vehicles.

## **End-of-Road Treatment**

The order requires the WCL to remove the crossing surface and the roadway surface from within its right-of-way at Haynes Street between August 15, 2006 and August 30, 2006. The order also requires the Village to install Type III barricades with red and white reflective material on each approach to the crossing by the date of the removal of the crossing surface. These are temporary barricades that the Village is required to replace with permanent steel guardrail barricades when it constructs the vehicle turnaround. Alternatively, the Village may install end-of-road markers ( section 3C.04 of the MUTCD) instead of a permanent steel guardrail

The order requires the Village to construct and maintain a vehicle turnaround area on the south approach to the existing Haynes Street crossing. Due to the proximity of USH 10, no turnaround is needed on the USH 10 side of the crossing. The Village may construct any non-cul de sac turnaround design consistent with the AASHTO's, " *A Policy on Geometric Design of Highways and Streets*, 2001 edition. Specifically, the Commissioner approves L-type, T-type, Y-type or I Branch turnarounds as shown in AASHTO Exhibit 5-8 (page 399). These turnaround designs are adequate for the low volume of traffic that would be on Haynes Street after the crossing is closed.

## **Costs**

Consistent with prior OCR practice, the order requires the WCL to bear the costs of closing the crossing, including the construction of vehicle turnaround, and removal of the crossing and the roadway approaches within its right-of-way. The Village shall bear the cost of new signage. Apportioning the majority of the closing cost to the railroad is consistent with the past practice of the OCR. (see, e.g., 9164-RX-332, Wisconsin Central Ltd., Plank Road, Mukwonago; 9020-RX-109/112, Burlington Northern Railroad Co., 13th Place, La Crosse; 9164-RX-196, Wisconsin Central Ltd., 271st Avenue, Town of Salem, Kenosha County; 9068-RX-35, Fox Valley Western Ltd., Depot Street, Kaukauna; 9164-RX-227, Wisconsin Central Ltd., Evergreen Avenue, Solon Springs; 9164-RX-306, Holmes Road, Town of Brillion, Calumet County; and 9163-RX-111, Wisconsin & Southern Railroad Co., Old CTH DT, Town of Genesee, Waukesha County.)

The WCL and the Village may enter into any agreement regarding the construction and payments for the work on the end of road treatments.

While public safety will benefit from the closing the railroad will obtain substantial and permanent financial gains from the closing. First, railroads bear a statutory duty to maintain all at-grade crossings. A full rehabilitation of a crossing like this one could easily cost \$20,000. Second, the inconvenience occasioned by the closing of the crossing all falls on the public, not the railroad. Third, the municipality will bear added maintenance costs for the vehicle turnaround (for example, road maintenance and snowplowing).

Ultimate Conclusions on the Issues

THE COMMISSIONER CONCLUDES:

1. That the closure of the crossing at-grade of the Wisconsin Central Ltd. tracks with Haynes Street in the Village of Milladore, Wood County will promote public safety and convenience.

2. That it is reasonable for the WCL to pay the cost to close the Haynes Street crossing, including the construction of vehicle turnaround, and removal of the crossing and the roadway approaches within its right-of-way.

Conclusion of Law

THE COMMISSIONER CONCLUDES:

That the jurisdiction of the Office of the Commissioner of Railroads under §§195.28 and 195.29, Stats., extends to this matter. Accordingly, the Office enters an order consistent with the findings of fact.

Order

THE COMMISSIONER ORDERS:

1. That the **Wisconsin Central Ltd.** shall remove the crossing surface and the roadway approaches within its right-of-way for the crossing at-grade of **Haynes Street** with their tracks in the Village of Milladore, Wood County between **August 30, 2006, and September 31, 2006.** (crossing no. 692-579H)

2. That in conjunction with the removal of the crossing, the **Village of Milladore** shall install Type III barricades with red and white stripes at or near the terminus of each approach to the crossing at-grade of **Haynes Street** with the Wisconsin Central Ltd. tracks in the Village of Milladore, Wood County by **August 30, 2006** [see Sections 3F-1, 6C-8 and Figure 6-14 in the Manual on Uniform Traffic Control Devices (MUTCD)].

3. That the **Village of Milladore** shall install and maintain L-type, T-type, Y-type or I Branch turnarounds at or near the termini of **Haynes Street** consistent with American Association of State Highway and Transportation Officials (AASHTO) guidelines (*A Policy on Geometric Design of Highways and Streets*, 2001 edition, pages 398-400 and Exhibit 5-8) in the Village of Milladore, Wood County by **June 30, 2007.**

4. That the **Village of Milladore** shall install and maintain a steel guard rail barricade with reflective red and white stripes at or near the terminus of the approaches on each side of the crossing at-grade of **Haynes Street** with the WCL tracks in the Village of Milladore, Wood County by **June 30, 2007.**

5. That the **Wisconsin Central Ltd.** shall give notice in writing to the Village at least 10 days prior to commencing work to close the crossings.

6. That the **WCL** shall not remove or destroy driveway accesses, if any, that currently exist within its right-of-way in removing the roadway approaches.

7. That the **Wisconsin Central Ltd.** shall pay the cost to close the Haynes Street crossing, including the construction of vehicle turnaround, and removal of the crossing and the roadway approaches within its right-of-way. The WCL shall also bear any cost assessed to the railroad pursuant to §195.60, Stats., for the investigation of this matter by the Office. The railroad shall not pass on those assessment costs either directly or indirectly.

8. That the **Village of Milladore** shall bear the costs to install and maintain the barricades on Haynes Street.

9. That jurisdiction is retained.

Dated at Madison, Wisconsin, August 14, 2006.

By the Office of the Commissioner of Railroads.

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Rodney W. Kreunen  
Commissioner of Railroads

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